

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed July 12, 2005. In order to advance prosecution of this case, Applicant amends Claims 1, 9, and 10. Applicant previously canceled Claim 8 without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this case.

Section 101 Rejections

The Examiner rejects Claims 1-7 under 35 U.S.C. § 101 stating that the claimed invention is directed to non-statutory subject matter. In particular, the Examiner indicates that: “[t]he ‘method for reporting a (KPI)’ comprising the steps of (a)-(e) as shown are [sic] merely an abstract idea and does not reduce to a practical application in the technological arts[.]” *Office Action*, p. 3. Applicant respectfully traverses this assertion, noting that Claim 1 recites “displaying the determined value of the key performance indicator via a contextual visualization interface.” Thus, the method of Claim 1 requires, *inter alia*, “displaying . . . via a contextual visualization interface.” Consequently, the method of Claim 1 does not produce “merely an abstract idea” and does, in fact, produce a useful, tangible, concrete result within the technological arts.

Additionally, Applicant respectfully notes that the Examiner fails to respond to Applicant’s previous arguments with respect to this rejection and instead merely repeats the Examiner’s conclusion without addressing the merits of the Applicant’s arguments. Applicant respectfully requests, if the Examiner sustains the rejection Claim 1 for lacking statutory basis, that the Examiner respond to the substance of Applicant’s arguments with respect to this issue and explain why the recited limitations “do not reduce to a practical application in the technological arts and are therefore are [sic] found to be non-statutory” as the Examiner asserts. *Office Action*, p. 4, underlining in original. In particular, Applicant requests that the Examiner provide support for the assertion that 35 U.S.C. § 101 requires “integration with computer or equivalence [sic] for carrying out a determination/calculation step” as none of the cases cited by the Examiner set forth this explicit requirement. In fact, the claims presented in all of the cases cited by the Examiner were found to represent statutory subject matter under 35 U.S.C. § 101.

As a result, Claim 1 is allowable for at least these reasons. Applicant respectfully requests reconsideration and allowance of Claim 1 and its dependents.

Section 112 Rejections

The Examiner rejects Claims 1-7, 9, and 10 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Applicant amends Claims 1, 9, and 10 to provide proper antecedent basis for the “occurrence” limitation. To the extent the Examiner may be rejecting these claims under 35 U.S.C. § 112 for other reasons, Applicant respectfully traverses this rejection.

The Examiner asserts that “it’s not clear how the step of ‘determine the value of the key performance indicator based on the business data’ is carried out or how the value is obtained since ‘based on the business data’ and related to the previous step with respect to ‘occurrence’ is not clear and definite.” *Office Action*, p. 4, underlining in original. Nonetheless, Applicant respectfully asserts that the fact Applicant does not limit Claim 1 to a single manner or way of performing the relevant claim element does not make the claim indefinite. Applicant respectfully notes:

Breadth of a claim is not to be equated with indefiniteness. If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.

MPEP § 2173.04 (citation omitted).

Nothing in the specification or the surrounding language of Claim 1 necessitates further limiting the claim element in question. Claim 1 properly leaves open the possibility that, with respect to the claimed method, “determining the value of the key performance indicator based on the business data” may be performed in any appropriate manner.

Thus, the scope of the claim is clear and Claim 1 as amended is allowable. Applicant respectfully requests reconsideration and allowance of amended Claim 1 and its dependents. Although of differing scope from Claim 1, Claims 9 and 10 satisfy the requirements of 35 U.S.C. § 112 for substantially similar reasons. Applicant respectfully requests reconsideration and allowance of Claims 9 and 10.

Section 103 Rejections

The Examiner rejects Claims under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,546,378 issued to Cook ("*Cook*"). As amended, Claim 1 recites:

A method for reporting a value of a key performance indicator comprising:
selecting a key performance indicator to monitor;
identifying at least one business event associated with the selected key performance indicator;
receiving a business event message indicating an occurrence of the business event, the business event message including business data describing the business event;
determining the value of the key performance indicator based on the business data; and
displaying the determined value of the key performance indicator via a contextual visualization interface.

Cook fails to disclose, teach, or suggest every element of amended Claim 1 for several reasons. First, *Cook* fails to disclose "selecting a key performance indicator to monitor." Second, *Cook* fails to disclose "identifying at least one business event associated with the selected key performance indicator." Third, *Cook* fails to disclose "receiving a business event message indicating an occurrence of the business event, the business event including business data describing the business event." Thus, as described in greater detail below, *Cook* fails to disclose, teach, or suggest every element of amended Claim 1.

First, *Cook* fails to disclose "selecting a key performance indicator to monitor." In rejecting Claim 1, the Examiner generically equates the "prediction" of *Cook* with the "key performance indicator" recited by Claim 1. At the outset, Applicant respectfully submits that the Examiner fails to cite a specific portion of *Cook* that discloses the "prediction" in the context the Examiner references in rejecting the various limitations of Claim 1. Applicant respectfully notes that "[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable." 37 C.F.R. § 1.104(c)(2). Applicants respectfully note that the Examiner cites nearly a column and a half of text that describes various different aspects and uses of the referenced "prediction." If the Examiner continues to rely on the "prediction" of *Cook* to reject any of the claims of this Application, Applicant respectfully requests that the Examiner

provide a precise citation that specifically describes this “prediction” in the context the Examiner is using to reject the relevant claims.

Nonetheless, *Cook* discloses that “[a] predictor generates a prediction for a use.” Col. 7, l. 37. *Cook* does not however disclose “selecting a [predictor] to monitor.” Thus, even accepting for argument’s sake the Examiner’s assertion that the “predictor” of *Cook* can be equated with the “key performance indicator” of Claim 1, *Cook* fails to disclose, teach, or suggest “selecting a key performance indicator to monitor” as recited by amended Claim 1.

Second, *Cook* fails to disclose “identifying at least one business event associated with the selected key performance indicator.” Again, Applicant respectfully notes that the Examiner has failed to provide a specific citation that describes the prediction in the context the Examiner is using to reject Claim 1, and Applicant respectfully requests that the Examiner provide a citation that specifically describes the “prediction” in this context. Additionally, the Examiner fails to identify what element of *Cook* the Examiner equates with the “business event” recited by Claim 1, and Applicant respectfully requests that the Examiner identify which element of *Cook* the Examiner equates with the claimed “business event” and provide a specific citation to the portion of *Cook* that describes the “business event” in the same context with respect to the referenced “prediction” as is recited with respect to the elements of Claim 1.

Nonetheless, in rejecting Claim 1, the Examiner merely notes, with respect to this limitation, that “Cook discloses a method of reporting a value of a key performance indicator (prediction), comprising: . . . b) identifying at least one business event associated with the KPI (prediction).” *Office Action*, p. 5. Even accepting, for the sake of argument, the Examiner’s assertion that the “predictor” of *Cook* can be equated with the “key performance indicator” of Claim 1, the Examiner fails to identify any element of *Cook* that can be equated with the claimed “business event,” as noted above and thus *Cook* fails to disclose any technique for “identifying at least one business event associated with the [prediction]” Thus, *Cook* fails to disclose “identifying at least one business event associated with the selected key performance indicator” as recited by Claim 1.

Third, *Cook* fails to disclose “receiving a business event message indicating an occurrence of the business event, the business event message including business data describing the business event. . .” As indicated above, Applicant respectfully notes that the

Examiner fails to identify any element of *Cook* that can be equated with the “business event” recited by Claim 1. The Examiner therefore fails to show how *Cook* discloses “receiving a business event message indicating the occurrence of the business event and describing the business event” as also recited by Claim 1.

Thus, *Cook* fails to disclose, teach, or suggest every element of amended Claim 1. Claim 1 is thus allowable for at least these reasons. Applicant respectfully requests reconsideration and allowance of Claim 1 and its dependents.

Although of differing scope from Claim 1, Claims 9 and 10 include elements that, for reasons substantially similar to those discussed with respect to Claim 1, are not disclosed, taught, or suggested by Claims 9 and 10. Claims 9 and 10 are thus allowable for at least these reasons. Applicant respectfully requests reconsideration and allowance of Claims 9 and 10.


Conclusions

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Todd A. Cason
Reg. No. 54,020

2001 Ross Avenue, Suite 600
Dallas, Texas 75201-2980
(214) 953-6452

Date: 10/12/05

CORRESPONDENCE ADDRESS:

Customer Number:

05073